the courts make and unmake the law at will. This leads to the desire for political control of the courts and the demand for an elective judiciary.

Whether this jurisdiction should nevertheless be entered upon involves a large problem of jurisprudence — that arising out of the conflicting desires for certainty in the law, and for due regard for the equities of individual cases.[18] Suffice it here to say that under prevailing methods of drawing statutes this sort of interpretation seems at times necessary to avoid absurd and untimely results from ill-framed legislation.

COMPENSATION FOR PROPERTY TAKEN FOR THE DEFENSE OF THE REALM. — The recent English case of *De Keyser's Hotel* v. *The King*,[1] in which compensation was allowed for a hotel taken during the war for war purposes, seems quite irreconcilable with the earlier decision, *In Re a Petition of Right*,[2] in which no compensation was allowed as a matter of right to the owner of an aerodrome also taken by military authorities for war purposes. The attempted distinctions fall under three heads: administrative purposes are distinguished from use in actual hostilities; taking *in invitum* is distinguished from taking pending negotiations; and finally, the Crown did not insist in the Hotel case on the consideration of the prerogative separately from the statutes. Of the first two contentions it is enough to say that they do not square with the facts. There was no contention in the first case that the aerodrome was wanted for actual hostilities. Besides, there was no pretense of going behind the decision of the proper administrative officers on the question of the necessity of the taking in either case. As to the contention that the negotiations for the transfer of the hotel under a lease make it impossible to consider the taking without a lease *in invitum*, it need only be stated in this naked form to be refuted. One wonders whether a desire on the part of the owner of the aerodrome to haggle with the government would not have saved his case as well.

The only distinction that remains is suggested by Warrington, L. J., who sat in both cases: the admission of the Crown in the second case that the prerogative was merged in the statutes. This seems a tremendously significant limitation of the prerogative, and one wonders why the Crown after its success in the aerodrome case yielded so much. Perhaps it was on the basis of a doubt on this point that the aerodrome case was compromised while pending in the House of Lords. Perhaps it was good policy not to risk a reversal on so valuable a point, *flagrante bello*. But a more important innovation in this argument was the suggestion that the Statute of 1842 was to be read in connection with the legislation of 1914. The older statute had fixed the right of compensation. The latter simplified procedure by enabling the administrative to do away with certain restrictions. They had done away with one restriction involving a two weeks' delay in taking possession and another involving the invasion of the kingdom as a condition precedent.

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[18] See Roscoe Pound, "The Enforcement of Law," 20 GREEN BAG, 401.

[1] [1919] 2 Ch. 197.
[2] [1915] 3 K. B. 649.

They had not, and probably could not have touched the question of the ultimate right to compensation, without the repeal of the clauses on this subject in the Statute of 1842. In other words, the decision in the aerodrome case was wrong.

Where judicial reasoning is thus bent to the breaking point to bring about a result inconsistent with a precedent only four years old, the true significance is probably to be sought in the effect of external events on public opinion rather than in the law itself. Have the political events of the last few years completed the supremacy of Parliament over the relics of the prerogative, which is now frankly defined as implied executive power? [3] Or has the coming of peace, a successful peace, restored to the judiciary in England the calm necessary to enable it to review coldly the history of the exercise of a power, even a war-time power, and say, "Thus far shalt thou come, but no farther"? At all events, the constitutional significance of the court's struggle to bring the statutes and regulations into harmony with English tradition and English ideas of fair play is brought out by the fact that the result finally reached is in the spirit of our Fifth Amendment: "Nor shall private property be taken for public use without just compensation." The fundamental similarity between our constitutional law and that of England is not rendered any less striking by our own doubts as to the applicability of the Fifth Amendment to property actively used in the prosecution of a war.[4] This decision marks a return to the point of view of peacetime. May it not mean more — for example, that the tremendous impetus given to the power of the executive arm during the recent emergency is already suffering a check in favor of the older "Rule of Law"? *Inter arma silent leges* — but soon the platitude that all of the old English law books used to copy from the Institutes is rediscovered, that laws as well as arms are necessary for the glory of a sovereign.

HIRED MOTOR VEHICLES AND *RESPONDEAT SUPERIOR*. — For the purpose of establishing a liability on the ground of *respondeat superior*, shall the driver of a hired motor vehicle be deemed during that enterprise the servant of the owner or the servant of the hirer? It has often been suggested that the owner of the machine be held absolutely liable for injuries caused by the negligent operation of the machine [1] — the automobile being considered a dangerous instrumentality kept by the owner at his peril. But to-day it is fairly well settled that the automobile is not such a danger to mankind as to make absolute responsibility an incident of ownership.[2] If some one besides the negligent

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[3] [1919] 2 Ch. 216.

[4] See 30 HARV. L. REV. 673.

[1] See Ashley Cockrill, "The Family Automobile," 2 VA. L. REV. 189; 33 HARV. L. REV. 118; L. R. A. 1915 D, 691.

[2] "It may be that it would be wise and in the public interests that responsibility for an accident caused by an automobile should be affixed to the owner thereof, irrespective of the person driving it, but the law does not so provide." Cunningham *v.* Castle, 127 N. Y. App. Div. 580, 588, 111 N. Y. Supp. 1057, 1063 (1908). "It is not the ferocity of automobiles that is to be feared, but the ferocity of those who